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7

8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**
10

11 DISABILITY RIGHTS CALIFORNIA, a
California nonprofit corporation,

12 Plaintiff,

13 v.
14

15 COUNTY OF ALAMEDA; ALAMEDA
COUNTY BEHAVIORAL HEALTH CARE
SERVICES; and ALAMEDA HEALTH
16 SYSTEM,

17 Defendants.
18

Case No. 20-cv-05256 JCS

**DEFENDANT ALAMEDA HEALTH
SYSTEM'S NOTICE OF MOTION AND
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT AND MOTION TO
STRIKE; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT**

Judge: Hon. Joseph C. Spero

Date: November 20, 2020

Time: 9:30 a.m.

Ctrm.: F – 15th Floor
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Case No. 20-cv-05256 JCS

DEFT. ALAMEDA HEALTH SYSTEM'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S
COMPLAINT AND MOTION TO STRIKE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

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NOTICE OF MOTION AND MOTION TO DISMISS

TO PLAINTIFF AND ITS COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on November 20, 2020, at 9:30 a.m., or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Joseph C. Spero, located in the United States Courthouse, Courtroom F, 15th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant ALAMEDA HEALTH SYSTEM (“AHS”) will and hereby does move this Court to dismiss all causes of action against it in Plaintiff Disability Rights California’s (“Plaintiff” or “DRC”) Complaint for Damages (“the Complaint”).

This Motion is made upon the following grounds:

Under Federal Rule of Civil Procedure, Rule 12(b)(1), this Court lacks subject matter jurisdiction because there is no case or controversy as to Defendant AHS. By its enabling legislation, AHS stands separate from the County of Alameda (“the County”). AHS consists of five hospitals, four wellness centers, and over 800 beds. Its psychiatric hospital, which is the subject of DRC’s allegations against it, is John George Psychiatric Hospital (“John George” or “the hospital”). Unsurprisingly, as a hospital, AHS does not arrest persons, nor seek to involuntarily bring patients to John George. Moreover, it is not AHS that has the power or resources to oversee patients in community-based programing, nor does it fund such programming. This is up to the County. Thus, DRC lacks Article III standing against AHS, as DRC constituents cannot suffer a risk of unjustified institutionalization caused by AHS. Nor, can the Court order a hospital like AHS to create community-based programming.

Further, DRC lacks statutory standing to pursue its federal claims as the relief that DRC seeks – community-based treatment of mental health conditions – is provided by the County. As pled, there is no available equitable relief against AHS. Until the County makes community-based treatment readily available, equitable relief that requires that AHS coordinate with the County on programming that does not yet exist is premature.

Under Rule 12(b)(6), DRC fails to state a valid claim upon which relief can be granted. Piecing together a cause of action, DRC blends its allegations as to the County’s detention, administration and funding of community-based programming with AHS’s limited function in

1 administering the hospital. But, in doing so, DRC has failed to plead with sufficient particularity
2 any causal connection between AHS's conduct and any alleged risk of unjustified
3 institutionalization. Thus, on its face, the Complaint falls short of the pleading standard sufficient
4 to state a claim against AHS.

5 Under Rule 12(f), allegations in the Complaint referencing racial disparities in patient care
6 and risk of COVID-19 infection should be stricken as redundant, impertinent, and immaterial.
7 These allegations are superfluous, inflammatory, and distract from the central issues of this case.
8 This is neither an inadequate medical care case more common in prison litigation, nor is it a case
9 based on racial inequities. DRC is no better off having pled these facts, than had it chosen a more
10 focused approach to litigate this case for efficient resolution. Accordingly, this Court should grant
11 AHS's motion to strike these allegations.

12 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
13 Authorities, and Request for Judicial Notice filed concurrently herewith, all of the pleadings, files,
14 and records in this proceeding, all other matters of which the Court may take judicial notice, and
15 any argument or evidence that may be presented to or considered by the Court prior to its ruling.

16 DATED: October 13, 2020

HANSON BRIDGETT LLP

17
18 By: /s/ Gimmel M. Trembly
19 KURT A. FRANKLIN
20 GYMME M. TREMBLY
21 Attorneys for Defendant
22 ALAMEDA HEALTH SYSTEM
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Disability Rights California (“DRC” or “Plaintiff”) has framed its complaint as an *Olmstead*-based claim of disability discrimination resulting from the alleged segregation of persons with mental health disabilities in psychiatric facilities and risk of continued unjustified institutionalization. Importantly, this case is not a case of discrimination in public accommodations against persons with disabilities. It is also not a case of lack of medical care brought typically in prison litigation. Instead, DRC blames AHS – a hospital – for its alleged failure to coordinate and refer patients to County services that do not yet exist.

For the following reasons, each of the DRC’s claims fail at the pleading stage and this Court should grant AHS’s motion to dismiss under Federal Rule of Civil Procedure, Rule 12(b)(1) and Rule 12(b)(6):

First, this Court lacks subject matter jurisdiction and should dismiss this action under Rule 12(b)(1) because there is no case or controversy for the Court to decide. DRC asks this Court to adjudicate a cause of action based on a future risk of harm that may be created by AHS and may never materialize, as patients are discharged from the hospital when it is safe to do so given the hospital’s medical assessment of the individual.

But by its enabling statute, AHS has a strictly limited function – the management of five hospitals and four wellness centers in Alameda County, including John George Psychiatric Hospital. At John George, a patient either voluntarily seeks psychiatric care, or he or she is brought to the hospital by the County after having made a determination with probable cause that the patient is a danger to himself or herself, or others, or is gravely disabled. AHS does not arrest, detain, nor place individuals in unjustified segregated facilities. Neither does AHS fund community-based programs or regulate the quality of care provided by those community-based programs. Those functions are the job of the County. Because AHS does not perform these functions, any alleged risk of future harm cannot be attributed to AHS. Moreover, no hardship results to DRC if its claims as to Defendant AHS are not heard in federal court because DRC can obtain the remedy it seeks from the County.

1 Second, this Court should also dismiss DRC's complaint under Rule 12(b)(1) because
 2 DRC lacks associational standing to bring this action. No DRC constituent can allege a risk of
 3 future harm that can be traced to any alleged unlawful conduct by AHS. And, DRC's sought after
 4 relief requiring Defendant AHS to refer DRC constituents to services under the County's
 5 operation and control – when it also claims that the County does not yet provide sufficient
 6 community-based programming – is premature.

7 Third, DRC has failed to state a claim upon which relief can be granted and this Court
 8 should dismiss the Complaint under Rule 12(b)(6). On its face, DRC's Complaint conflates the
 9 County's alleged failures in providing, administering and funding for community-based care for
 10 DRC constituents, with AHS's statutory mandate to provide individualized emergency psychiatric
 11 care at John George. In short, DRC blames AHS for the County's funding-based inability to
 12 make community-based programs available and seeks to remedy that failure by requiring AHS to
 13 discharge patients to non-existent community-based services.

14 Fourth, DRC has failed to state a claim that any DRC constituent face risk of
 15 institutionalization based AHS's alleged unlawful conduct. Indeed, DRC's allegation that DRC's
 16 exemplars face a risk of unjustified institutionalization results from the County's failure to provide
 17 community-based programming; not from AHS's hospital administrative procedures. DRC's
 18 claim that AHS's practices present a risk of harm to DRC constituents of unjustified
 19 institutionalization are conclusory and based on speculation and surmise given the current status of
 20 community-based programming.

21 Finally, this Court should also grant Defendant AHS's motion to strike under Rule 12(f) as
 22 to DRC's allegations of racial disparities in patient care and risk of COVID-19 infection should be
 23 stricken as redundant, impertinent, and immaterial. These allegations are superfluous,
 24 inflammatory, and unnecessary to establish a cause of action under the statutory framework of
 25 Title II of the ADA, the Rehabilitation Act, and State public accommodation law, and serve only
 26 to distract from the central issues of this case. Accordingly, this Court should grant AHS's motion
 27 to strike these allegations.

28 ///

II. ISSUES PRESENTED

A. Does This Court Lack Subject Matter Jurisdiction To Hear DRC's Claims Against A Hospital When DRC's Concern Is Based On County-Provided Community-Based Programming That Does Not Yet Exist?

- An Article III court has subject matter jurisdiction to hear a case when there is a case or controversy for it to adjudicate. On one hand, a case is ripe where the questions are purely legal ones; on the other hand, a case is unripe if a threatened injury is contingent on several events which may or may not happen.

Given that the County detains persons with mental health disabilities for involuntary psychiatric treatment and is responsible for providing community-based care to such persons, and the hospital, which only provides emergency psychiatric mental health care to patients to keep them from harming themselves or others, does not have the means to provide community-based programming, does this Court have jurisdiction to hear claims against the hospital when DRC's relief is based on County-provided community-based programming?

B. Can An *Olmstead*-Based Discrimination Claim Under Title II Of The Americans With Disabilities Act, Section 504 Of The Rehabilitation Act, And Government Code Section 11135, Be Raised Against A Hospital That Provides Emergency Psychiatric Care And Has No Means To Provide Community-Based Programming?

- Both Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act ("Rehabilitation Act") forbid public entities from discriminating against qualified individuals because of his or her disability. Under both federal laws, discrimination results when a public entity fails to provide services, programs, or activities in the most integrated setting appropriate to the needs of the individual. Further, California law codifies the proscriptions against discrimination in Government Code section 11135 such that a violation of ADA results in a violation of Section 11135.

Because DRC has pled that (a) the County is responsible for providing, administering, and funding community-based programming for persons with mental health disabilities, and (b) the County has not created enough community-based programming to satisfy the needs of its residents, as to AHS (the hospital) does the Complaint state a claim of disability discrimination under Title II of the ADA, Section 504 of the Rehabilitation Act, and California Government Code section 11135 based on the hospital's claimed failure to refer patients to community-based programming that does not yet exist?

III. PROCEDURAL BACKGROUND

Plaintiff, disability advocacy association DRC, has filed this *Olmstead*-based action claiming the County and AHS discriminate against persons with mental health disabilities. This case follows recent litigation brought against the County challenging prison conditions and medical care provided to prisoners in County jails; *Gonzalez, et al. v. Ahern, et al.* and *Babu, et*

///

1 *al. v. County of Alameda, et al.*¹ DRC sought to relate this case to the *Babu* class action, which
 2 was filed in December 2018. The *Babu* case raises constitutional challenges to the use of
 3 isolation, mental health care provided to prisoners and alleged unlawful segregation of prisoners
 4 with mental health needs at Santa Rita and Glenn Dyer county jails. *Babu* also claims *Olmstead*-
 5 based allegations concerning prisoners with psychiatric disabilities based on the County's alleged
 6 use of punishment of prisoners because of their mental health disabilities, inadequate suicide
 7 prevention, inadequate staffing, and inadequate discharge planning among other claims.² The
 8 *Gonzalez* class action filed against the County challenges the general facility conditions and
 9 services. Both actions include allegations that the County failed to adequately prevent individuals
 10 from becoming infected with COVID-19.³ The *Babu* court correctly rejected DRC's motion to
 11 relate the cases.⁴

12 The *Babu* Plaintiffs also ask the Court to grant an equitable remedy from the County
 13 requiring that it cease discriminating against prisoners with psychiatric disabilities by housing
 14 such inmates in the most integrated setting appropriate to their individual needs. Thus, the
 15 County's obligations (if any) to provide mental health programs to DRC "constituents" is already
 16 being litigated. Wrongly, DRC's lawsuit brought by lawyers and an organization that is friendly
 17 to *Babu* is an effort to sweep AHS into litigation which it does not belong.

18 IV. FACTUAL BACKGROUND

19 A. Alameda Health System Oversees John George Psychiatric Hospital, Which Is 20 Limited To Treatment Of Patients In Mental Health Crisis

21 AHS is an independent hospital authority dedicated to the management, administration,
 22 and control of five hospitals and four wellness centers – including John George Psychiatric
 23 Hospital.⁵ At John George, patients, including the medically indigent, receive emergency or
 24

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 26 ¹ *Gonzalez, et al. v. Ahern, et al.*, Case No. 19-cv-07423-JSC; *Babu, et al. v. County of Alameda, et al.*, Case No. 5:18-cv-07677-NC.

27 ² *Babu*, First Am. Compl., ¶ 6.

28 ³ *Id.* ¶¶ 163-164; *Gonzalez* Second Am. Compl., ¶¶ 172-188.

⁴ *Babu* Dkt. No. 193.

⁵ Cal. Health & Safety Code § 101850.

1 inpatient psychiatric treatment.⁶

2 AHS is an entity separate and distinct from the County.⁷ And, its relationship with the
3 County is purely contractual.⁸ AHS and the County are parties to a Master Contract (“Master
4 Contract”). Under the terms of this agreement, the County purchases certain medical and health
5 services from AHS.⁹ However, the County retains the sole ability to terminate the activities of
6 AHS and can expire AHS as an entity.¹⁰

7 **B. Psychiatric Treatment For Individuals With Mental Health Disabilities At John**
8 **George Psychiatric Hospital Is Provided According To Statutory Mandates**

9 County residents, including Medi-Cal beneficiaries, may receive mental health services at
10 John George. By statute, individuals are admitted to the John George for emergency services
11 when, due to a mental health disorder, he or she is a danger to himself or herself, or others, or is
12 gravely disabled as a result of the mental health disorder.¹¹ An individual may seek voluntary
13 psychiatric care at John George. Alternatively, by law enforcement, the courts, or other County
14 action, a patient may be involuntarily brought to the hospital for acute, intensive mental health
15 treatment for up to 72 hours, upon a showing of probable cause.¹²

16 To ensure the hospital can deliver high quality care, in some circumstances the hospital
17 census may be adjusted and emergency departments seeking to transfer patients to the hospital
18 may be delayed. The hospital’s census management includes an assessment of available physical
19 space in the emergency unit, staffing levels and whether adding additional staff to ensure quality
20 care is not possible due to staff unavailability, the availability of one-to-one staffing, the number
21 of patients waiting for an evaluation by a physician, and the number of patients with a confirmed
22 and available disposition. If the hospital determines that conditions in the emergency unit exceeds
23

24 ⁶ Master Contract Between County of Alameda and Alameda County Medical Center, executed
25 June 23, 1998 as amended November 28, 2000, a true and correct copy attached as Ex. A to Def.’s
Req. for Judicial Notice (hereinafter, “Ex. A”) § 1.11.

26 ⁷ Cal. Health & Safety Code § 101850(j).

⁸ *Id.* §§ (k)-(l).

⁹ Ex. A § 3.2.

27 ¹⁰ *Id.* § 6.5; Cal. Health & Safety Code § 101850(ak).

¹¹ Cal. Welf. & Inst. Code §§ 5150; 5150.05.

28 ¹² *Id.* §§ 5150; 5151.

its ability to deliver high quality mental health services, area emergency departments seeking to transfer patients to John George will be delayed. However, patients arriving at John George by way of ambulances, walk-in patients seeking emergency care, and patients brought to the hospital by law enforcement will continue to be admitted.

Once at John George, the hospital may admit the patient only after having determined that the individual is in need of emergency services and cannot be properly served without admission.¹³ The patient is informed that he or she may request to be evaluated or treated at a facility of his or her choice, and may request to be evaluated or treated by a mental health professional of his or her choice.¹⁴ The hospital honors the patient's choice when possible.

Following the 72-hour admission period, the patient may continue inpatient treatment on a voluntary basis. For some patients, continued involuntary intensive treatment may be necessary.¹⁵ A person may be committed for an additional 14-day period for intensive treatment.¹⁶ However, such detentions can be terminated before the expiration of the commitment period, and he or she has the right to have a judicial determination of whether there is probable cause for the commitment.¹⁷ Further, the person being certified also has the right to counsel and the right to bring a writ of habeas corpus.¹⁸

C. DRC Asks This Court For Equitable Relief Against AHS Which Only The County Can Provide

DRC seeks to require that AHS take immediate action to: (1) cease the unnecessary institutionalization of DRC constituents; (2) provide intensive community-based mental health services; and, (3) ensure that these community-based services are provided in a manner that is culturally congruent.¹⁹ In this lawsuit, DRC has wrongly reinvented the bounds of AHS's function in disregard of the law and public contracts that limits the hospital's function. As

¹³ *See id.*

¹⁴ *Id.* § 5150(g)-(i).

¹⁵ *Id.* § 5250.

¹⁶ *Id.*

¹⁷ *See id.* §§ 5254, 5254.2.

¹⁸ *Id.*

¹⁹ Compl. at 39, ¶ 3.

discussed below, only the County, not AHS, can provide DRC the equitable relief it seeks.

D. Alameda County And Alameda County Behavioral Health Care Services Administer Mental Health Care Services For Alameda County Residents

California participates in Medicaid through the Medi-Cal Program and has designated the Department of Health Care Services as the entity responsible for its administration.²⁰ The Department implements and administers mental health care for Medi-Cal eligible residents of the State through Mental Health Plans (“MHP”).²¹ The MHP in each county is responsible for setting appropriate standards relating to the quality, access, and coordination of services within a managed system of care, and opportunities for Medi-Cal providers to provide services, as long as the provider meets MHP standards.²² Medi-Cal beneficiaries receive mental health care services through the County MHP, including, inpatient hospitalizations services and psychiatric health facility services.²³

The County provides mental health services independently and in conjunction with mental health and substance abuse programs, and community hospitals and health centers.²⁴ Alameda County Behavioral Health Care Services (“ACBHCS”), a County entity, is the MHP in Alameda County. Accordingly, the County – not AHS – is responsible for arranging, and paying for specialty mental health services for beneficiaries.²⁵

V. LEGAL STANDARD

The Court must dismiss a case when it lacks subject matter jurisdiction or when the plaintiff fails to state a claim upon which relief can be granted.²⁶ Federal Rule of Civil Procedure 12(b)(1) requires dismissal for failure to state grounds for federal subject matter jurisdiction.²⁷

²⁰ See Cal. Welf. & Inst. Code §§ 10720, 14000, *et seq.*; 22 C.C.R. § 50000, *et seq.*

²¹ Cal. Welf. & Inst. Code §§ 14682.1, 14726, 14714.

²² *Id.* §§ 14680, 14684(a)(3).

²³ See Cal. Code Regs. tit. 9, § 1810.205; *see*, § 1820.219; *see also*, § 1820.220.

²⁴ Ex. A § 1.5.

²⁵ Alameda County Behavioral Health Policy & Procedure: Authorization of Specialty Mental Health Services, 200-2, attached as Ex. I to Def.’s Req. for Judicial Notice; *see also*, Cal. Code Regs. tit. 9, § 1810.228.

²⁶ Fed. R. Civ. P. 12(b)(1), 12(b)(6).

²⁷ *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506, 126 S. Ct. 1235, 1240, 163 L. Ed. 2d 1097 (2006) (“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”).

1 A complaint should be dismissed for failure to state a claim under Rule 12(b)(6) when
 2 there is a lack of a cognizable legal theory or the absence of sufficient facts alleged under a
 3 cognizable legal theory.²⁸ A complaint must state “enough facts to state a claim to relief that is
 4 plausible on its face.”²⁹

5 In ruling on a motion to dismiss under Rule 12(b)(6), the court generally considers only the
 6 pleadings, and accepts as true the allegations contained in the complaint.³⁰ However, the court
 7 does not accept as true “[t]hreadbare recitals of the elements of a cause of action, supported by
 8 mere conclusory statements.”³¹ Also, the court may take judicial notice of documents in the
 9 public record.³²

10 VI. ARGUMENT

11 A. DRC Lacks Article III Standing Because There Is No Case Or Controversy As To 12 Defendant AHS

13 DRC lacks standing to pursue its claims against Defendant AHS. A complaint is properly
 14 dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the court lacks
 15 constitutional authority to adjudicate the dispute.³³

16 More specifically, Article III courts are confined to adjudicating actual “cases” and
 17 “controversies,” in other words, the case must be ripe for adjudication.³⁴ The party invoking
 18 federal jurisdiction bears the burden to establish standing, *i.e.*, carries the burden to allege
 19 sufficient facts to establish that the case is ripe for adjudication based on the following: (1) fitness
 20 of the issues for judicial decision, and (2) hardship to the parties resulting from withholding court

21 _____
 22 ²⁸ *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

²⁹ *Bell Atlantic Corp. v. Twombly*, 500 U.S. 554, 570 (2007).

³⁰ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

³¹ *Id.*

³² *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (citing *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir.1986)) (on a motion to dismiss, a court may take judicial notice on matters of public record); *Johnson v. DTBA, LLC*, 424 F. Supp. 3d 657, 662 (N.D. Cal. 2019) (taking judicial notice of public records maintained on government websites).

³³ *See* Fed. R. Civ. P. 12(b)(1).

³⁴ U.S. Const. art. III, § 2; *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547, 194 L. Ed. 2d 635 (2016), as revised (May 24, 2016) (The irreducible constitutional minimum of Article III standing consists of three elements, as the plaintiff must have: (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision).

1 consideration.³⁵ On one hand, a case may be ripe where the questions are purely legal ones; on the
 2 other hand, a case is unripe if a threatened injury is contingent on several events which may or
 3 may not happen.³⁶

4 “Federal courts cannot—and should not—spend their scarce resources on what
 5 amounts to shadow boxing. Thus, if a plaintiff’s claim, though predominantly legal
 6 in character, depends on future events that may never come to pass, or that may not
 occur in the form forecasted, then the claim is unripe.”³⁷

7 Here, DRC’s prayer for relief seeks to have the Court declare AHS’s actions unlawful.
 8 Beyond this declaratory relief, its demand is solely equitable in nature. But as to AHS, DRC’s
 9 Complaint is premature because it asks the Court for remedies that are entirely dependent on the
 10 County creating community-based mental health services and remedies that are beyond AHS’s
 11 reach.³⁸

12 **1. As pled, the issues before this Court are not fit for adjudication because AHS**
 13 **does not detain patients, nor does it have the means to provide community-**
based programming.

14 DRC’s Complaint asserts that individuals with mental health disabilities will be exposed to
 15 risk of unjustified institutionalization by Defendant AHS unless it immediately “(a) [c]ease[s] the
 16 unnecessary institutionalization of DRC constituents; (b) [p]rovide[s] intensive community-based
 17 services to prevent unnecessary institutionalization; and (c) [e]nsure[s] that these intensive
 18 services are provided in a manner that is culturally congruent and responsive.”³⁹ But as to AHS,
 19 the Complaint states a threatened injury that may never come to pass since DRC’s concern is

20 ³⁵ *McInnis-Misenor v. Maine Med. Ctr.*, 319 F.3d 63, 73 (1st Cir. 2003).

21 ³⁶ See *Ohio Forestry Assn. v. Sierra Club*, 523 U.S. 726, 118 S. Ct. 1665, 140 L. Ed. 2d 921
 22 (1998) (citing to *Abbott Laboratories v. Gardner*, 387 U. S. 136, 148-149, 87 S.Ct. 1507, 18 L.
 23 Ed. 2d 681 (1967); *Ernst & Young v. Depositors Econ. Prot. Corp.*, 45 F.3d 530, 537 (1st
 Cir.1995) (“Even when the ‘legal’ emphasis of a particular claim is sufficient to mask gaps in the
 factual record, a court will find ripeness lacking if the anticipated events and injury as simply too
 remote to justify contemporaneous adjudication”).

24 ³⁷ *Ernst & Young*, 45 F.3d at 537 (1st Cir.1995).

25 ³⁸ DRC seeks declaratory judgment that would find “a. failing to provide DRC Constituents with
 26 services in the most integrated setting and needlessly institutionalizing them in a psychiatric
 hospital or other institution or putting them at serious risk of such institutionalization;
 27 b. discriminating against DRC Constituents on the basis of disability by utilizing methods of
 administration, adopting and applying policies, failing to make reasonable modifications to
 programs and policies, and engaging in practices that result in unnecessary segregation and
 institutionalization or subjecting them to risk of institutionalization.” Compl. at 39, ¶ 1.

28 ³⁹ Compl. at 39, ¶ 3.

1 based on County-provided community-based programming.

2 **a. AHS does not arrest, detain, take into custody, nor institutionalize**
 3 **patients.**

4 AHS treats patients, it does not and cannot institutionalize them. It does not arrest, detain,
 5 nor “take” into custody any patient. By legislative mandate and contract, its charge is limited.
 6 Persons are treated at John George on an involuntary basis only if they present a danger to
 7 themselves or others, or are gravely disabled. Patients are either brought to the hospital by the law
 8 enforcement, the County mobile crisis team, or designated County professional.

9 DRC’s Complaint recognizes that it is the County that detains individuals for
 10 commitment – “[u]nder California commitment laws, a DRC Constituent can be detained for up to
 11 72 hours based on a statement by certain County staff that they have reason to believe that the
 12 person, due to a mental health disability, is gravely disabled or a danger to themselves or others.”⁴⁰
 13 And, “the County detains vast numbers of Constituents at John George.”⁴¹ Thus, only the County
 14 detains, arrests, takes into custody, and institutionalizes patients – not AHS.

15 Further, only after patients are at the hospital are AHS’s statutory obligations to administer
 16 appropriate mental health care services triggered. John George staff may admit a patient in severe
 17 psychiatric crisis based on their assessment.⁴² Once the patient is admitted to the hospital, as soon
 18 as possible, in light of staffing and other patient needs, a hospital professional evaluates and
 19 assesses the care appropriate for the needs of the individual.⁴³ For some patients, his or her
 20 emergency psychiatric condition may require that he or she is admitted to the hospital for up to 72
 21 hours; for others, treatment may require up to 14 days of care.⁴⁴ In any case, to prevent
 22 inappropriate, indefinite commitments of patients, such treatment is implemented incrementally by
 23 statute and patients may be discharged before the expiration of their 72-hour or 14-day care.⁴⁵

24 There is no controversy as to Defendant AHS because by statute the hospital’s function is

25 _____
 26 ⁴⁰ Compl. at 17, ¶ 72.

⁴¹ *Id.* at 17, ¶ 74.

⁴² Cal. Welf. & Inst. Code § 5150.

⁴³ *Id.* §§ 5150, 5152.

⁴⁴ *Id.* §§ 5150, 5250.

⁴⁵ *Id.*

1 to treat and care for the mental health needs of patients, not to detain, arrest, take into custody, nor
2 institutionalize patients. That later is a function of the County.

3 **b. AHS does not place, provide, nor fund community-based services**

4 AHS does not place patients in intensive community-based services; rather, its purpose is
5 strictly to provide patients psychiatric care.⁴⁶ Instead, it is the County that is responsible for the
6 administration of community-based programming. Based upon appropriate medical
7 recommendations, the hospital can discharge patients.⁴⁷ Indeed, an individualized medical
8 assessment prior to discharge is an essential part of the care provided to John George patients such
9 that the Legislature codified specific procedural requirements that must be followed prior to
10 release. For instance, if a dispute arises between the psychiatrist and other professional
11 concerning whether to terminate the 72-hour treatment of a patient early, a psychiatrist must make
12 the decision.⁴⁸ Discharge occurs “only if, the psychiatrist directly responsible for the person’s
13 treatment believes, as a result of his or her personal observations, that the person no longer
14 requires evaluation or treatment.”⁴⁹

15 In contrast, for a patient who is not in crisis, the County through its MHP, ACBHCS,
16 provides community-based programming and sets standards for quality of the care provided by
17 these services.⁵⁰ ACBHCS is responsible for ensuring that persons with mental health disabilities
18 have access to specialty mental health care services.⁵¹ The Complaint states that Defendant
19 ACBHCS is required to, and can provide the intensive community services constituents need to
20 stop unnecessary institutionalization.⁵² Moreover, ACBHCS designate[s] which facilit[y] to use
21 for evaluation and treatment of individuals.⁵³ And, it is “responsible for providing mental health

22 _____
⁴⁶ Ex. A at § 1.7.

23 ⁴⁷ See Cal. Welf. & Inst. Code §§ 5150, 5250.

24 ⁴⁸ See *id.* § 5152.

24 ⁴⁹ *Id.* § 5152(a).

25 ⁵⁰ See Cal. Welf. & Inst. Code §§ 14684, 14718; Compl. at 15, ¶ 66 (“ACBHCS is the agency responsible for implementing Alameda County’s mental health system”).

26 ⁵¹ See Cal. Code Regs., tit. 9, § 1810.405(a).

27 ⁵² Compl. at 25, ¶¶ 116-117 (noting the specific services that DRC constituents need to stop unnecessary institutionalization can be provided as an integrated part of the FSP model and ACBHCS is required to provide all of these services through Medi-Cal and Mental Health Services Act).

28 ⁵³ See *id.* at 17, ¶ 72.

1 treatment in County jail.”⁵⁴

2 Therefore, taking the facts of the Complaint as true, any risk of unnecessary
3 institutionalization cannot be placed upon AHS because it is not responsible for placing,
4 providing, nor funding community-based programs, nor dictating that the programs provide a
5 service in a culturally congruent manner. Instead, the County does so by contracting with specific
6 service providers to ensure that residents with mental health disabilities have services available to
7 them, including emergency care, urgent care, and routine care that meets the individual’s mental
8 health needs.⁵⁵

9 AHS is simply a service provider.⁵⁶ AHS is an entity separate and apart from the County;
10 it is not “governed by, nor [] subject to, the charter of the county and shall not be subject to
11 policies or operational rules of the county, including, but not limited to, those relating to personnel
12 and procurement.”⁵⁷ The County, in seeking to fulfill its commitment to the medically indigent,
13 special needs, and general population of its residents entered into an agreement with AHS to
14 provide psychiatric hospital services to County residents.⁵⁸ And, under its Master Contract, the
15 County retains the ability to terminate the activities of AHS and expire AHS as an entity.⁵⁹
16 Accordingly, only the County can provide the relief that DRC seeks. It is up to the County to fund
17 community-based services, or cut them. Moreover, the County maintains a system to monitor
18 compliance with its designated standard of care, and makes compliance required in order for a
19 provider to receive funding for its services.

20 In contrast, AHS provides necessary, individualized treatment for emergency psychiatric
21 conditions on an incremental basis and discharges patients based upon a medical assessment of the
22 particular needs of the individual. Because AHS does not institutionalize patients and cannot
23 provide community-based programs, nor can it dictate to these programs that they provide services
24

25 ⁵⁴ *Id.* at 23, ¶ 107.

26 ⁵⁵ *See* Cal. Code Regs., tit. 9, §§ 1810.205, 1810.226, 1810.305, 1810.405; Cal. Welf. & Inst.
Code § 14714.

27 ⁵⁶ *See* Compl. at 15, ¶ 66.

28 ⁵⁷ Cal. Health & Safety Code § 101850(j).

⁵⁸ Ex. A § 1.11.

⁵⁹ Cal. Health & Safety Code § 181850(ak); Ex. A § 6.5.

1 in a culturally congruent and responsive manner, there is no presently available remedy to DRC
 2 based on an action that the Court could require of AHS. Therefore, the issues before this Court as
 3 to Defendant AHS are not fit for adjudication.

4 **2. DRC does not suffer direct hardship if its claims as to Defendant AHS are not**
 5 **heard in federal court.**

6 DRC faces no hardship if its complaint against Defendant AHS is dismissed. Hardship
 7 focuses on the direct and immediate harm.⁶⁰ As pled, DRC is not prevented from presenting their
 8 claims in federal court, nor is it prevented from having its claims heard as to the County. If
 9 appropriate, the County has the authority, conferred upon it by legislation, to grant DRC's relief
 10 sought if the Court were to find a violation of Title II of the ADA and Section 504 of the
 11 Rehabilitation Act. As alleged by DRC, given that the County has not yet created the additional
 12 community-based programming that DRC seeks, John George professionals cannot take the action
 13 that DRC asks this Court to require.

14 **B. DRC Lacks Article III Associational Standing Because DRC Has Not Pled That Any**
 15 **DRC Constituent In His Or Her Own Right Can Claim A Risk Of Unjust**
 16 **Institutionalization Resulting From Any Conduct By AHS**

17 DRC lacks associational standing to bring claims on behalf of its members. To have
 18 associational standing, DRC must establish: (1) its members would otherwise have standing to
 19 sue in their own right; (2) the interests it seeks to protect are germane to the organization's
 20 purpose; and (3) neither the claim asserted nor the relief requested requires participation of
 21 individual members in the lawsuit.⁶¹

22 DRC has not pled that any of its constituents, including exemplars, have standing to sue in
 23 his or her own right. Because DRC seeks injunctive-relief, it must also plead that any DRC
 24 constituent risks a real threat of repeated injury that is more than conjecture.⁶²

25 A person with a mental health disability claiming discrimination must have standing to sue

26 ⁶⁰ *McInnis-Misenor*, 319 F.3d at 73.

27 ⁶¹ *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441,
 53 L. Ed. 2d 383 (1977); *Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1110 (9th Cir. 2003)
 (finding that "PAMII—although relevant to the standing analysis—does not definitively answer
 28 the question" whether an advocacy organization has standing).

⁶² *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

1 at each stage of the litigation.⁶³ To invoke jurisdiction a DRC constituent must (1) have suffered
 2 an injury-in fact, (2) the injury must be traceable to the challenged conduct, and (3) a favorable
 3 decision must redress the injury.⁶⁴

4 As discussed above, taking the facts of the Complaint as true, any risk of unnecessary
 5 institutionalization cannot be placed upon AHS because it is not responsible for placing,
 6 providing, nor funding community-based programs, nor dictating that the programs provide a
 7 service in a culturally congruent manner. AHS provides necessary, individualized treatment for
 8 emergency psychiatric treatment on an incremental basis and discharges patients based upon a
 9 medical assessment of the particular needs of the individual. Because the County is responsible
 10 for detaining individuals, funding and administering a system of care that provides Alameda
 11 County residents with mental health disabilities access to community-based programs, the remedy
 12 that DRC seeks can only be obtained from the County.

13 As pled, DRC's prayer for relief leads to the result of forcing AHS to rely on the actions of
 14 another entity before it can be in compliance with the Act. Here, it is up to the County to add
 15 additional community-based programming so that AHS will be able to refer patients to these
 16 services. If required, for example, it would be up to the County to provide care for its homeless
 17 residents suffering from mental health disabilities.⁶⁵ And, even if such programs are created, there
 18 is no way for AHS to control whether those programs will be the "most integrated setting" for
 19 individuals with disabilities. The County, not AHS, is responsible for the quality of each program
 20 and to maintain a mechanism for monitoring the effectiveness of, and evaluating accessibility and
 21 quality of, services available.⁶⁶ Thus, at this stage, until out-of-hospital remedies are available, as
 22 to AHS, DRC's complaint is a hypothetical that is not ripe for judicial review. Therefore, DRC
 23
 24

25 ⁶³ See U.S. Const. art. III, § 2.

26 ⁶⁴ *Lujan*, 504 U.S. at 560-61.

27 ⁶⁵ Compl. at 29, ¶ 125 ("Recent data show that there were approximately 300 permanent
 supported housing slots in Alameda County dedicated to people with serious mental health
 disabilities, even though the number of homeless adults with serious mental health disabilities in
 the County is estimated to exceed 2,500").

28 ⁶⁶ See Cal. Welf. & Inst. Code § 14684.

1 does not presently have standing to bring its claim against AHS.⁶⁷

2 **C. DRC's Fails To State A Claim of Disability Discrimination Upon Which Relief Can**
3 **Be Granted**

4 A complaint is properly dismissed per Rule 12(b)(6) if DRC "fail[s] to state a claim upon
5 which relief can be granted."⁶⁸

6 **1. DRC has not alleged facts to make a regular disability accommodation claim**
7 **under the ADA or Rehabilitation Act and limits itself to an *Olmstead***
8 **integration claim.**

9 Framed as an *Olmstead* case, DRC's complaint is that AHS statutorily mandated
10 emergency psychiatric care of patients with mental health disabilities is unlawful under the ADA
11 and Rehabilitation Act, and the federal laws' respective implementing regulations. But DRC's
12 allegations are insufficient to satisfy the elements of an *Olmstead* integration mandate claim.

13 Section 504 of the Rehabilitation Act of 1973 makes it unlawful for any program or
14 activity that receives federal funding to discriminate against an individual solely because of his or
15 her disability.⁶⁹ Similarly, Title II of the ADA forbids public entities from denying qualified
16 persons with a disability the opportunity to participate or benefit from the public entity's services,
17 programs, or activities, or subjecting such persons to discrimination by reason of his or her
18 disability.⁷⁰ The Supreme Court determined in *Olmstead v. L.C. ex rel. Zimring*, that the
19 unjustified institutionalization of persons with disabilities is a form of discrimination under Title II
20 of the ADA.⁷¹

21 This is not a case of discrimination in public accommodations under the ADA or the
22 Rehabilitation Act. DRC's complaint is devoid of facts supporting a claim that DRC or its

23 ⁶⁷ A finding that DRC's claims against AHS cannot be remedied by the equitable relief it seeks
24 from the hospital, should also result in the dismissal of the state claim under Government Code
25 sections 11135 and 11139 under which the only remedy available is equitable relief. *Prescott v.*
26 *Rady Children's Hosp.-San Diego*, 265 F. Supp. 3d 1090, 1102 (S.D. Cal. 2017) (finding in the
context of the Affordable Care Act, Plaintiff's failure to establish standing due to a failure to
establish future harm or how an injunction would remedy the alleged discrimination, Plaintiff
cannot support a claim based on alleged discrimination under Government Code section 11135.)

27 ⁶⁸ Fed. R. Civ. P. 12(b)(6).

28 ⁶⁹ 29 U.S.C. § 794(a).

⁷⁰ 42 U.S.C. § 12131, *et seq.*

⁷¹ *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 119 S.Ct. 2176, 144 L.Ed.2d 540 (1999).

1 constituents were denied participation in or benefit from government service, programs, or
 2 activities because of his or her disability. Instead, DRC's Complaint is limited to an *Olmstead*
 3 claim of discrimination based on the alleged unjustified institutionalization of persons with
 4 disabilities by a psychiatric hospital. DRC "challenges Defendants' needless and illegal
 5 segregation of adults with serious mental health disabilities into Alameda County's psychiatric
 6 institutions" as a form of discrimination under *Olmstead*.⁷²

7 **2. Because courts interpret the ADA and Rehabilitation Act's integration**
 8 **requirement in an identical manner, DRC's failure to state a claim under the**
 9 **ADA necessarily results in a failure to state a claim under the Rehabilitation**
 10 **Act, and the derivative claim under state law also fails.**

11 When viewed together, the ADA and the Rehabilitation Act impose identical integration
 12 obligations upon public entities. Moreover, both mandates are similarly qualified. A public entity
 13 that is otherwise required to make a reasonable modification to avoid discrimination can avoid
 14 making such modifications when doing so would "fundamentally alter the nature of the service,
 15 program or activity." ⁷³

16 As a result, courts interpret the integration mandate under the ADA and Rehabilitation Act
 17 in an identical manner.⁷⁴ Accordingly, should this Court find that DRC has failed to state a claim
 18 of discrimination under the ADA, it must find that the same is true under Section 504 of the
 19 Rehabilitation Act.

20 Similarly, DRC's claim of discrimination under California law derives from the
 21 proscription against discrimination of persons with disabilities under the ADA.⁷⁵ Therefore, a
 22 finding that dismissal of the Complaint is warranted because DRC has failed to state a claim for

23 ⁷² Compl. at 1-4, ¶¶ 1-13; *see also*, Compl. at 12-15, ¶¶ 54-63.

24 ⁷³ 28 C.F.R. § 35.130(b)(7)(i) (ADA) (requiring reasonable modifications unless fundamental
 25 alteration to the public entity's services, program, or activity results); 28 C.F.R. § 41.53
 (Rehabilitation Act) (requiring reasonable accommodations, except if undue hardship on the
 operation of the public entity's program results).

26 ⁷⁴ *Townsend v. Quasim*, 328 F.3d 511, 518 (9th Cir. 2003); *Black v. Dep't of Mental Health*, 83
 Cal. App. 4th 739, 749, 100 Cal. Rptr. 2d 39, 45 (2000).

27 ⁷⁵ Cal. Gov. Code § 11135; *Bassilios v. City of Torrance*, 166 F.Supp.3d 1061, 1084 (C.D. Cal.
 28 2015) (finding Government Code section 11135 claim identical to a claim of discrimination under
 Section 504 of the Rehabilitation Act and coextensive with Title II of the ADA such that liability
 based on either the Rehabilitation Act or the ADA, results in liability under Section 11135).

1 relief under federal law, must necessarily result in dismissal of DRC's state law claim.

2 **3. DRC fails to state that AHS's statutorily mandated patient care is not in**
 3 **accordance with the prescriptions of the ADA and Rehabilitation Act.**

4 DRC takes issue with AHS's allegedly deficient consultation and coordination with
 5 community providers, ACBHCS case managers, physicians, and others in connecting patients to
 6 the community-based programming they need – which it claims does not sufficiently yet exist.⁷⁶
 7 This, allegedly, results in unjustified institutionalization of persons with mental health
 8 disabilities – a form of unlawful discrimination under both the ADA and the Rehabilitation Act.⁷⁷
 9 As articulated below, how can AHS violate a statutorily mandated care of patients and patient
 10 discharge practices when DRC also alleges that the County does not provide programs for AHS to
 11 discharge patients?

12 DRC's theory is that AHS violated the integration mandate under the ADA and
 13 Rehabilitation Act. The ADA's implementing regulations requires that a public entity provide
 14 services to qualified individuals in the most integrated setting appropriate to the patient's needs.⁷⁸
 15 In *Olmstead*, the Court held that a violation of the integration mandate occurs when (1) treatment
 16 professionals have determined that community placement is appropriate, (2) the transfer from
 17 institutional care to a less restrictive setting is not opposed by the affected individual, and (3) the
 18 placement can be reasonably accommodated, taking into account the resources available to the
 19 State and the needs of others with mental disabilities.⁷⁹

20 DRC fails to state with sufficient particularity that Defendant AHS's conduct violates the
 21 integration mandate because community-based treatment placement is an obligation of the
 22 County – not AHS. Moreover, DRC does not plead a plausible claim that AHS's administration
 23 of the hospital had a discriminatory effect because there is no alleged unlawful conduct by AHS
 24 that results in AHS placing DRC constituents at risk of institutionalization.

25 By DRC's own pleading, AHS does not place patients into community-based

26 ⁷⁶ Compl. at 32, ¶¶ 134-136.

27 ⁷⁷ *Id.* at 17, ¶ 71; *id.* at 31, ¶¶ 131-136.

28 ⁷⁸ 28 C.F.R. § 35.310(d).

⁷⁹ *Olmstead*, 527 U.S. 581 at 607.

1 programming. Yet DRC conflates its allegations as to Defendant AHS with the County and
 2 ACBHCS in an effort to manufacture a cause of action. DRC has alleged no facts, even as to its
 3 four exemplars, that AHS is responsible for the risk of unjustified institutionalization of its
 4 constituents.

5 First, with regard to Ms. Ahmad, DRC states, “Defendants did not take steps to provide
 6 Ms. Ahmad with community-based crisis services, even though Ms. Ahmad would have strongly
 7 preferred such care.”⁸⁰ But, again, AHS does not place, provide, nor fund community-based
 8 programs.

9 Second, DRC alleges that Defendants failed to connect Mr. Walter with the community-
 10 based mental health services he needed.⁸¹ Two paragraphs later, DRC states that the County
 11 recently assisted him in re-connecting him with a community-based program and in securing
 12 housing.⁸² Once, again, connecting Mr. Walter to the community-based programming he needed
 13 is a job for the County.

14 Third, DRC alleges that KG’s mental health symptoms have been made worse by, among
 15 other reasons, “poor discharge planning from psychiatric institutions such as John George.”⁸³
 16 DRC claims that KG is homeless and lacks community services and “without access to the needed
 17 intensive community services, KG is at serious risk of further unnecessary institutionalization.”⁸⁴
 18 Thus, as alleged, it is the County’s inability to connect KG to community-based programming
 19 results in the alleged risk of unjustified institutionalization to KG, not conduct by AHS.

20 Fourth, MR was allegedly released from John George without a discharge plan.⁸⁵
 21 However, DRC claims MR’s lack of medical insurance and inability to access community-based
 22 mental health care services resulted in her subsequent treatment at John George.⁸⁶ Because the
 23 hospital does not provide medical insurance, nor does it have the responsibility or means to
 24

25 ⁸⁰ Compl. at 8, ¶ 33.

26 ⁸¹ *Id.* at 9, ¶ 37.

27 ⁸² *Id.*

28 ⁸³ *Id.* at 10, ¶ 42

⁸⁴ *Id.*

⁸⁵ *Id.* at 10, ¶ 46

⁸⁶ *Id.*

1 provide community-based services, once again, DRC identifies a job for the County.

2 Moreover, the ADA's prohibition against discrimination does not require that public
3 agencies provide persons with disabilities with the opportunity to remain out of institutions.⁸⁷
4 Indeed, the statute is not intended to prevent institutionalization. For some who are unable to
5 handle or benefit from community setting, a hospital may be the best care option.⁸⁸ For others,
6 even though a hospital setting may be the best option, they lack access. "Any person who has
7 been homeless due to profound mental illness of years and will not accept shelter when offered is,
8 by any commonsense definition, gravely disabled. Yet the protection intended by the [gravely
9 disabled] standard is clearly not working. If it were, we wouldn't have thousands of homeless
10 people living on the streets."⁸⁹ To fully satisfy the mental health needs of County residents
11 legislative action is required, not court intervention which risks second guessing the medical
12 assessments of hospital medical professionals.⁹⁰

13 As pled, DRC cannot make an *Olmstead* claim against AHS and its claim must be
14 dismissed.

15 **D. DRC's Allegations Of Racial Disparities In Treatment, And COVID-19 Risk Of**
16 **Infection Are Immaterial And Impertinent, And Must Be Stricken**

17 Rule 12(f) of the Federal Rules of Civil Procedure provides that the "court may strike from
18 a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous
19 matter."⁹¹ A Rule 12(f) motion serves to avoid spending time and money on "litigating spurious
20 issues by dispensing with those issues before trial."⁹²

21 DRC raises several allegation concerning the disproportionate number of Black patients
22

23 ⁸⁷ *Rodriguez v. City of New York*, 197 F.3d 611 (2d Cir. 1999) (finding that the Supreme Court's
24 decision in *Olmstead* only requires adherence to the ADA's nondiscrimination requirement as to
the services a public entity actually provides).

25 ⁸⁸ *See, Olmstead*, 527 U.S. at 601-602.

26 ⁸⁹ Jonathan Sherin and Darrell Steinberg, *Op-Ed: Mentally ill people in desperate need of*
treatment often don't get it because of an antiquated law, Los Angeles Times, (Aug. 20, 2020),
<https://www.latimes.com/opinion/story/2020-08-20/op-ed-mentally-ill-people-often-dont-get-treatment-because-of-antiquated-law>.

27 ⁹⁰ *See id.*

28 ⁹¹ Fed R. Civ. P. 12(f).

⁹² *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983).

1 treated at the hospital and increased risk of COVID-19 infection at the hospital. However, these
 2 are immaterial to the Court's determination of liability on a discrimination action based in unjust
 3 institutionalization. DRC's inclusion of such facts serve to detract from the issues before the
 4 Court, and inflame and capitalize on the current political and social climate. Accordingly, this
 5 Court should strike such allegations as immaterial and impertinent.

6 VII. CONCLUSION

7 DRC asks the Court to declare that AHS is in violation of public accommodation laws
 8 under *Olmstead* for failing to coordinate the release of patients to community-based programming
 9 that does not exist. Next, DRC asks the Court to order AHS to coordinate with the County on the
 10 programming that the County controls and does not exist. While it may ask that the County
 11 increase its programming, DRC cannot ask this Court to find that AHS is failing to release patients
 12 to programs that do not exist. Requiring AHS to coordinate or refer patients to services not yet
 13 available is premature. Moreover, this Court should not be placed in the position of second
 14 guessing the medical assessments of medical professionals that would in essence cede hospital
 15 operations to DRC and the Court.

16 For these reasons, Defendant AHS asks this Court to grant this motion to dismiss DRC's
 17 complaint against AHS in its entirety.

18 DATED: October 13, 2020

HANSON BRIDGETT LLP

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